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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICCARDO CESARINI
and GIANFRANCO COLOMBO

Appeal 2008-5792
Application 10/679,357
Technology Center 1700

Oral Hearing Held: January 13, 2009

Before TERRY J. OWENS, MARK NAGUMO, and
KAREN M. HASTINGS, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

Christopher T. Kent, Esquire
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MS. BOBO-ALLEN: Good morning. Calendar No. 10, Appeal No. 2008-5792. Mr. Kent.

MR. KENT: Thank you.

MS. BOBO-ALLEN: Um-hum.

MR. KENT: Good morning.

JUDGE HASTINGS: Good morning.

MR. KENT: We're ready to proceed. My name is Christopher Kent. I'm here on behalf of the appellant Ricardo Cesarini and Gianfranco Colombo.

I wanted to start this morning by providing just a little bit of background about the technology just to provide some perspective about the rejections, and then following that I'd like to show how the appellants' claims are distinguishable from the references. The application at issue here relates to tires for high-performance vehicles and, in particular, to the tread design for those tires. With respect to tire technology, performance is based on the tread pattern as a whole rather than particular pieces of the pattern, and I think that fits well with the law on obviousness which requires looking at the references as a whole and the, and the claims as a whole rather than picking and choosing parts of the claims and the references of putting them together.

Performance tradeoffs with tire technology are many, and as such, the designs are, are tradeoffs as well. For example, the perfect dry weather high-performance tire would be a slick tire, would have no treads, whereas for wet grip a tire would have very deep and, and many grooves to help channel the water from under the tire. Another issue with tire technology is noise. Blocks create noise as they roll across the ground. Another issue is

stability, something that some people refer to as tread squirm. Tread squirm relates to the fact that blocks, as they travel across the ground between the vehicle and the road, have a sort of flexibility. Now that flexibility provides a lack of confidence when you're driving in a high-performance situation. And in particular with this case, wear, wear is a very big issue with, with tires, and when I say wear I say -- mean thermal as well as physical degradation. As the, as the tread wears down, the blocks actually change shape slightly due to the fact that the blocks do not extend from the tread or the tire carcass in necessarily a perpendicular manner, and also there's a thermal degradation that takes place with respect to the, to the material, the elastomer material. Heating up and cooling down and heating up and cooling down, the elastomer material may change properties.

So with, with respect to this particular application, we're looking at trying to reduce thermal stresses during tire operation and compression and sheer stresses. As seen in the test results at the back of the appellant's application, the novel and nonobvious tread design claimed here has provided surprising improvements relating to existing tread designs.

Let me quickly discuss the claims at issue. I'm going to be referring to independent claims. There are six of them, 39, 58, 111, 130, 135 and 154. Now three of these independent claims are directed to a tire for a vehicle. Those claims are 39, 111 and 135. Three of the claims are directed to a set of tires, and when I say a set, actually four tires are recited, two front tires and two rear tires, and those are independent claims 58, 130 and 154. In the claims reciting the, the set of tires, the front and rear tires actually have different recited stressors.

If I might approach the bench, I have a figure here that I think might be helpful for our discussion. This figure is figure 2 from the application with some annotations to help follow along with respect to what we're discussing here this morning.

JUDGE NAGUMO: Were these annotations before the Examiner?

MR. KENT: The annotations?

JUDGE NAGUMO: Yeah.

MR. KENT: No, but nothing here is new. All of this was disclosed before in the application.

JUDGE NAGUMO: Okay, but -- and these annotations you've made those comments to the Examiner in the record somewhere in the --

MR. KENT: Oh, yeah. I mean --

JUDGE NAGUMO: Okay.

MR. KENT: -- these are just claim terms relating to different aspects.

JUDGE NAGUMO: Thank you. If you have an extra copy, if you could give it to the reporter.

MR. KENT: Can I give it to him afterwards?

JUDGE NAGUMO: Well, let me --

MR. KENT: Actually, I can give him this one.

JUDGE NAGUMO: If you're going --

MR. KENT: I can give him this one.

JUDGE NAGUMO: -- just be sure to use as, as many terms to make it as concrete as possible.

MR. KENT: Okay.

JUDGE NAGUMO: For the record.

MR. KENT: Here, if you'd like to follow along, that's fine.

Thank you.

JUDGE NAGUMO: Thank you very much.

MR. KENT: Okay, let me just read you quickly some portions of claim 39 to give you some relevant -- to recite some relevant claim terminology here. Claim 39 you'll see is, is directed to a tire for a vehicle, and getting down to the tread portion, wherein, let's see, 1, 2, 3, 4 -- on line eight, wherein the tread comprises an equatorial zone E, two shoulder zones F and G, wherein the equatorial zone extends on both sides of an equatorial plane YY which is shown vertically for figure 2, wherein the two shoulder zones are disposed in axially opposed positions with respect to the equatorial zone, wherein the tread further comprises a plurality of transversal grooves 15. Now these are the diagonal grooves extending I guess left to right up and left -- and right to left up depending on which set of grooves you're looking at. Wherein each of the transversal grooves comprises an equatorial groove portion, that's 17, in the equatorial zone E and a shoulder groove portion 16 in one of the shoulder zone. Wherein -- let's see, skipping down one here, wherein the shoulder groove portion of each transversal grooves has at least a width's portion smaller than the equatorial groove portion, and wherein the transversal grooves 15 are circumferentially distributed in groups.

Now if you look at figure 2, a group would be, for example, 15A through 15E alternately extending from the axially opposed shoulder zone. Wherein the groups of transversal grooves, that would be 15A through 15E, define a plurality of substantially continuous tread portions 18 in the equatorial zone. Now those tread portions 18 are in between the grooves there.

And then further, wherein each substantially continuous tread portion ends at an equatorial groove portion of a same transversal groove of an axially opposed group of transversal grooves. Now a same transversal groove would be in this figure 2, for example, would be 15A. And then wherein each of the transversal grooves ends at a predetermined distance D. You can see a little D down there kind of in the middle. Okay, from the equatorially groove portion of the longest transversal group 15A of the, the longest being 15A of the axially opposed group of transversal grooves so that all the transversal grooves end within the equatorial zone.

JUDGE NAGUMO: If I could interrupt for just a minute.

MR. KENT: Sure.

JUDGE NAGUMO: And let me know if you're going to come back to this anyway, and you can put me off that way. The wherein each of the transverse grooves ends at a predetermined distance. As shown, each one of those distances is the same. Is -- what -- is that a requirement, or is that just a particular instance? In other words, can each predetermined distance be different as long as it's predetermined?

MR. KENT: No, that's --

JUDGE NAGUMO: And, and where is the support for that? And if you're going to come back to that, just tell me that.

MR. KENT: I will come back to that.

JUDGE NAGUMO: Okay.

MR. KENT: But the answer to that is yes, they are the same distance.

JUDGE NAGUMO: Okay, thank you.

MR. KENT: And, and I can -- I'll refer to the support when I get to it.

So that's a representative reading of the independent claims. Now the independent claims also have aspects that distinguish themselves from one another, but that's just to give you kind of a basis for what we're talking about when we talk about transversal grooves and substantially continuous tread portions.

Okay, moving on to the rejections, there's basically three rejections of the independent claims. There's one I'll refer to as the Japan 408 rejection which is a 103 rejection based on the collection of the following references. Japanese patent application no. 4-154408, Great Britain patent no. 2,224,472, which I'll call Great Britain 472, Japanese patent publication no. 6,247,109, which I'll refer to as Japan 109, alleged admitted prior art, and U.S. patent no. 2,104,532 to Sommer, which I'll refer to as Sommer. That's one claim rejection and that applies -- has been made against all of the independent claims. All of the independent claims have been rejected further under what I'll refer to as the Sommer rejection which is a 103 rejection based on the following collection of references, Sommer, Great Britain 472, admitted prior art, and optionally at least one of U.S. patent no. 1,996,418 to Hargraves in Japan 109. And then finally, there is a third rejection of -- that applies to independent claim 135 only, and I'll refer to that as the Hoover rejection, and that's 103 based on U.S. patent no. 2,011,552 to Hoover and U.S. patent no. 4,446,902 to Madec.

Concerning the Japan 408 rejection, all of the independent claims recite the following recitations, and Japan 408 lacks this subject matter. It recites the following recitations. Wherein such -- wherein each substantially continuous tread portion ends at an equatorial groove portion of a same transversal groove of an axially opposed group of transversal grooves, and

wherein each of the transversal grooves ends at a predetermined distance from the equatorial groove portion of a longest transversal groove of the axially opposed group of transversal grooves so that all of the transversal grooves end within the equatorial zone.

With respect primarily to independent claims 39 and 58 which also recite wherein the longest transversal groove of the axially opposed group of transversal grooves extends from one of said axially opposed shoulder zones and terminates at a location between the equatorial plane, that was YY, and the sidewall opposite the said one opposed shoulder zone. So it extends from one shoulder zone across the equatorial plane into a position between the opposite sidewall, so it has to extend all the way across. Independent claims 38 and 39 recite that. The Examiner contends that figure 2 of Japan 408 discloses that the longest transverse group extends across the equatorial plane. Japan 408 has continuous grooves running from the central portion to both shoulder portions, and therefore they terminate in the shoulder portions, not at a location prior to the shoulder zone.

JUDGE NAGUMO: What defines the shoulder zone at the shoulder portion?

MR. KENT: The shoulder, the shoulder itself I believe is, is shown in figure, figure 1, and at 4 on one side and 5 on the other side.

JUDGE NAGUMO: Yeah, but, but what defines it? I mean I --

MR. KENT: The shoulder zone?

JUDGE NAGUMO: I could call (indiscernible) in the shoulder. I could call just the, the very edge of the tire a shoulder and --

MR. KENT: Or I --

JUDGE NAGUMO: -- what's to prevent me from being extremely -- where does this specification define the shoulder?

MR. KENT: Okay, well, the specification defines a shoulder, let's see, at page 16, line 21, it says the tire 1 comprises a carcass structure 2, improving a central ground portion and two sidewalls 4, 5, provided with reinforcing ply. Okay.

And then turning to page 17, let me -- just a second. At 19, in transversal grooves, on line 19 of page -- yeah, of line 19 of page 17, the transversal grooves are circumferentially distributed according to pitch P and grooves alternately extending from opposite shoulder zones F and G of the tread 14 and distributed according to the pitch P along the circumferential development of said tread. And that -- if you refer to figure 2, it will show where the shoulder zones E -- or I'm sorry, F and G lie.

If you look at the claim, the claim also says wherein a carcass structure comprises a central crown portion and two sidewalls, and then wherein a tread comprising an equatorial zone and two shoulder zones wherein the equatorial zone extends between the -- extends on both sides of an equatorial plane of the tire YY. Wherein the two shoulder zones are disposed in actually opposed positions with respect to the equatorial zone. And that's, that's how the, the shoulder zones are defined in the claims and in the spec.

JUDGE NAGUMO: So it's anything -- I can choose a point somewhere to either side of the equatorial line, which seems to be well defined, and call anything outside of that the shoulder zone?

MR. KENT: Well, the -- yeah, I think it's reasonable to extend the shoulder zone from some point beyond the, you know, on either side of the

equatorial plane, if you will, and then some distance, because there is an equatorial zone that's --

JUDGE NAGUMO: So as long as I give the equatorial zone some width --

MR. KENT: Right, it has to have some --

JUDGE NAGUMO: -- I can call anything outside of that over to the edge of the tire the shoulder zone?

MR. KENT: I believe so. I'd have to -- I mean I would have to --

JUDGE NAGUMO: Okay, thank you.

MR. KENT: -- look deep into it, but I'm not -- I don't know -- the equatorial zone may be defined more specifically to be, you know, a portion of the contact patch or something. But I don't, I don't know offhand.

JUDGE NAGUMO: Just -- I'm trying to pursue this a little bit, because we're talking about transversal grooves and equatorial grooves.

MR. KENT: Right.

JUDGE NAGUMO: And transversal grooves I think have to cross from the shoulder into the equatorial zone. Is that correct? So where that zone boundary is defines to some -- well, it seems to define whether something is a transversal groove or not?

MR. KENT: Right.

JUDGE NAGUMO: And so that --

MR. KENT: Well, well, the --

JUDGE NAGUMO: -- could be important --

MR. KENT: -- transversal groove is actually the whole groove if I may. I'm sorry I cut you off.

JUDGE NAGUMO: Okay. No, go ahead, please.

MR. KENT: The transversal groove extends all the way from the sidewall across into the equatorial zone. There are two portions of the transversal groove. One portion is the shoulder portion, and one portion is the equatorial portion. As shown there in figure 2, the shoulder portion I believe is referred to as 16, and the equatorial portion is 17. So consistent with the disclosure, yes, there is a region in the center portion of the tire that's an equatorial zone, and there are regions on either side of that that are shoulder zones, and then there's the shoulder, the sidewall itself.

JUDGE NAGUMO: Is there any deficiency in JP-408 other than the transversal grooves not ending within the equatorial zone?

MR. KENT: Well, the -- that is a primary difference between the claims and, and the -- and JP-408. Looking at JP-408, if you look at, for example, figure, figure 2, figure 2 has, has the zigzag pattern that continuously runs circumferentially around the tire. Now the Examiner has taken the position that based on the Great Britain patent, it would be obvious to remove that groove which is contrary to what Japan 408 says. Japan 408 has that zigzag groove that runs circumferentially around the tire to prevent wandering on grooved pavement. I don't know -- you don't see it that much anymore, but grooved pavement was big I think in the '70s or '80s. I don't know if I'm dating myself, but it was always really odd driving on it, because it made a strange noise, and the car always felt like it was shimmying. And so when he refers to trying to get rid of tread wander, that's what I believe he's referring to in Japan 408.

Now Great Britain 472 actually has a portion running down the middle of the tire. Let me just turn to Great Britain 472. Great Britain 472 is primarily concerned with wet weather traction, and so we have these

diagonal grooves in the tire, and one of the things he teaches is getting rid of circumferential grooves that extend all the way around the tire. Now what he, what he has here is he has tread that, that on the center line is continuous. So he -- in a sense he has a continuous tread rib running around the center line of his tire. Unfortunately, such a continuous tread rib would be inherently problematic with respect to wander.

So the two references are somewhat inconsistent in, in their teachings in terms of trying to combine them with one another. For example, if you looked at, at Japan 408, and you looked at Great Britain 472, I think if you looked at them as a whole, you certainly wouldn't come away with let's remove the zigzag groove that Japan 408 specifically teaches as being important to prevent tread wandering.

JUDGE NAGUMO: I, I -- maybe you can correct me. I thought that the point of 408 here was to cut off the grooves. I think they're labeled 4 in the figure from the groove 7. On, on my picture here, I've covered the grooves, what I've called 7 --

MR. KENT: Okay.

JUDGE NAGUMO: -- in green and the orange over here, and if you just chop off the -- break the connection between 4 and 7, then you would achieve the continuous islands 18, and so I'm not quite sure how to relate that to your statement that the Examiner wants to remove the groove, if you could clarify me on that.

MR. KENT: Well, to the extent -- I, I think I understand what you're getting at. Japan 408 has the, the -- I guess the blocks 5 set up in such a way that the rolling noise will be reduced. You won't have a consistent harmonic set up, and the way he does that is by purportedly -- purportedly the way he

does that is by having these blocks spaced, like he, he defines these blocks, but he has the spacing in such a way that he won't create a harmonic between the different blocks as the, as the tire rolls around. I can't say that I'm an expert in, in how that works, but he wants an inconsistent distance. He doesn't want them all the way the same. So he's got what he calls -- I think he calls them V-shaped or lambda shaped things, but essentially there are three different sizes inherently set up in that pattern. But what's important is in order for that pattern to be set up at all, he needs that groove that zigzags down the middle of the tire. And the Examiner is trying to take that groove away based on 472. That's the, that's the way we understand his rejection, and we feel it's inconsistent with Japan 408. And since it's inconsistent, if you took the references as a whole, certainly you wouldn't come away with the claim that we have, not without improper hindsight.

Let me quickly address the predetermined distance aspect that you brought up. I think the Examiner has taken a position with respect to that limitation that's inconsistent with the disclosure as a whole. If you look at how we described, how we described this aspect in the application. Let me just quickly get to that portion. There's a couple different places in the application that we refer to that. For example, on page 8, line -- beginning at line 8, it says preferably the equatorial portions of the transversal grooves, as would be 15 now, terminate at a prefixed distance from the equatorial plane of the same transversal groove. Still more preferably the transversal groove having a prevailing length of axially opposed group of grooves. Preferably such distances -- such distance, one distance, is comprised between 0 millimeters and 50 percent of the mean fit of the tread pattern, and still more preferably it is at least equal to 4 millimeters.

Now if you look at figure 2, figure 2 we have actually identified that distance as D. Referring to page 17 at line 25, starting there, it says the transversal grooves 15A, 15B, having a greater length, extend on either side of equatorial plane YY of the tire, while all of the grooves, 15A through 15D, of each group terminate at a prefixed distance D from the equatorial portion of the transversal groove 15A, having a prevailing length of axially opposite group of grooves.

Now the Examiner in his, his position has been that a predetermined distance seems to be a plurality of different distances related to each of the different length grooves. Now that reading is, we believe, contrary to the natural reading of the claim limitation, and further it's, it's a characterization of the limitation that's inconsistent with the specification. For example, looking at the -- how it's recited in the claim, it says wherein, wherein each of the transversal grooves ends at a predetermined distance from the equatorial groove portion of a longest transversal groove of the axially opposed group of transversal grooves so that all of the axially transversal grooves end within the equatorial plane.

Now to take his position, it would be more natural to have recited it as to say wherein the, the transversal grooves end at predetermined distances from the equatorial groove portion of the longest transversal groove, and that combined with how we've described it in the specification I believe it, it shows that it really means that all of those end at the same predetermined distance.

JUDGE NAGUMO: What would you say to an argument that's made -- say this is a patent, so now you're suing somebody for infringement, and they say well, they gave very precise language in the specification that

we agree means that each transversal groove has to end at a particular distance, and that's certainly within the scope of their claims, but their claim language is broader than that. It's somewhat ambiguous, and you have to import this clear language. If they wanted the clear language in the claim, why didn't they use the clear language in the claim, so reading the claim broadly and not inconsistently with the spec, it certainly encompasses the one distance, but it also encompasses these other distances which is in the prior art which therefore, you know, we'd -- whether or not we infringe, the, the claim is no good as against prior art.

If you wanted that precise language, how would argue that you're not reading limitations from the spec into the claim to get it?

MR. KENT: Well, well, I think the way you would respond to that is you would say look, the, the way you define the claim term, the way you construe the term is not in a vacuum. You construe the term by looking at the, the specification and the claims in their entirety and understanding what one of ordinary skill in the art would bring from that, and one aspect of that is you would not interpret the claim term or limitation, if you will, in a way that is inconsistent with the way it's described in the spec.

JUDGE NAGUMO: It's not inconsistent. It's just broader. That's the argument I'm proposing to you. It includes the case where they're all -- all terminate the same distance, each one of these transversal grooves. But it also includes a distance where each one is determined -- ends at a different, a different distance from its neighbor say.

MR. KENT: Right.

JUDGE NAGUMO: But that distance is predetermined. I mean it doesn't change from similar area to similar area on the tread.

MR. KENT: Right.

JUDGE NAGUMO: So we've got a --

MR. KENT: I would --

JUDGE NAGUMO: -- broad claim. We're supposed to read it broadly. Why must we be --

MR. KENT: Well, I would, I would say that well, it's ambiguous, and to the extent that it's ambiguous that -- the, the federal circuit is that you look to the disclosure and say okay, what is reasonable from the disclosure? What's enabled from the disclosure? For example, the Nistrom and Trex (phonetic sp.) case.

JUDGE NAGUMO: But, but they're all enabled here. I don't think --

MR. KENT: Right.

JUDGE NAGUMO: -- there's an enablement problem.

MR. KENT: Right.

JUDGE NAGUMO: To make these different lengths. So if it is ambiguous, why shouldn't we hold you to the broad reading, the broadest reasonable reading, and we'll give you the uniform distance as a special case. Why should we make that the sole case of the claim?

MR. KENT: Well, I, I don't think that's the broadest reasonable reading though. If you read the claim term naturally, it says a predetermined distance. Each transversal groove, a predetermined distance from that same longest transversal groove. So --

JUDGE NAGUMO: Okay, I, I have your position. Thank you.

MR. KENT: Okay.

JUDGE NAGUMO: We needn't beat the horse.

MR. KENT: All right.

JUDGE NAGUMO: Further.

MR. KENT: I'm not sure how much time I have left at this point.

JUDGE OWENS: You're over your 20 minutes. But you -- maybe you can proceed to the other rejections quickly.

MR. KENT: Okay. Looking to the, the Sommer rejection, the Examiner has, has rejected the claims based on Sommer. Now one of the, one of the -- there are several, there are several problems that we have with the Sommer reference. Number one, the Sommer reference with respect to claims 39 and 58, the transverse -- what the Examiner has identified transverse grooves in Sommer, shown in figure 8 and figure 8A, those do not extend from one, do not extend from one of said axially opposed shoulder zones and terminate at a location between the equatorial and the sidewall of said one of the axially opposed shoulder zones.

Now the Examiner had said well, the, the grooves extend to the equatorial plane or to the center plane, but that's not what the claim requires. The claim requires extending beyond the center plane so in that --

JUDGE HASTINGS: Well, I think -- can I stop you here? The --

MR. KENT: Sure.

JUDGE HASTINGS: -- Examiner's position was relying on column -- page 3, the first column of Sommer, which says that the grooves are of different length and such a manner that in the center plane there is a zigzag stripe.

MR. KENT: Right.

JUDGE HASTINGS: And he's saying with -- in line with the center plane of the tire, and he's saying in order to make a zigzag stripe at the

center plane, necessarily the longest grooves must cross the equatorial plane. That is his position.

MR. KENT: Right.

JUDGE HASTINGS: And you, you don't think that's reasonable?

MR. KENT: No, I don't. I mean there is no reason that the, the groove has to extend beyond the center in order for it to be zigzagged. I mean essentially what he, he has is, if you will, let's see, I don't have anything to write it with. But I mean you can have a zigzag without ever crossing the center line. For example like that, so I don't -- I'm not necessarily -- I, I don't buy into that, because it's not necessarily the case that the grooves would have to extend across and onto the other side in order to have the zigzag at the center.

JUDGE NAGUMO: From the drawing, it looks roughly like the grooves do cross that, and I think you had some sort of a not to scale kind of argument, but how does not to scale comport with what appears to be, I have to get a ruler out along with that, but they appear to cross the center line. Drawing is good for all it teaches one of skill in the art, so yeah, they don't need to cross the center line perhaps. They certainly don't to get a zigzag, but if you have something that does cross the center line, it teaches that you certainly could cross it, and so why isn't that a reasonable teaching to take?

MR. KENT: Well, I think if you look at the, at the express language in the specification that refers to those and how, how they relate to the center line, it says extends to the center line. So the express language in Sommer doesn't support an interpretation of extending across the center line.

JUDGE NAGUMO: Okay, thank you.

MR. KENT: There are similar arguments with respect to this, just to try to move things along, there are similar arguments with respect to Sommer relating to the other independent claims. One of them is Sommer teaches narrow slits that flex such that as a slit flexes, the edge will cut into mud to provide better traction. That's inconsistent with the claim recitations and the other independent claims that recite performing a stiff matrix for dispensing with the stresses and, you know, as, as the tire rolls along.

JUDGE NAGUMO: Do you have a definition in the spec for stiff matrix?

MR. KENT: Let's see.

JUDGE HASTINGS: I think the term in the claim is structurally stiff grid.

MR. KENT: Structurally stiff grid.

JUDGE HASTINGS: Is what's in claim 111.

MR. KENT: Right, and the Examiner has taken a position that that's a relative term, but it's inconsistent with the teaching of the Sommer reference which teaches a specific flexibility in order to achieve what he's trying to do.

JUDGE NAGUMO: Well, if it's relative I -- where's the definition of structurally stiff grid or an equivalent term that would let us say it may be relative, Examiner, but they've defined it this way? So -- and you haven't taken that into account.

MR. KENT: Right.

JUDGE NAGUMO: Otherwise anything -- everything has a certain degree of flexibility, so in some sense the Examiner's position has merit unless your spec defines against it.

MR. KENT: Okay. I don't believe we have defined it in the sense of stiff as in pound per feet, but our position still is that's contrary to what we're trying to do here. There are also other reasons why Sommer doesn't meet the limitations, and those deal with the -- how the transversal grooves are related to transversal grooves of the opposite transversal grooves. For example, in the claim limitations, wherein, wherein a substantially continued tread portion -- let's see, where an insubstantially continuous tread portion ends in an equatorial groove portion of the same transversal groove, that's just not shown in Sommer, and wherein each of the transversal grooves ends at a predetermined distance from the equatorial groove portion of the longest transversal groove, we already talked about the predetermined distance, in the transversal groove so that all of the transversal grooves end within equatorial zone. I don't believe those are shown either.

The last, the last rejection is the Hoover rejection. The Examiner, the Examiner is -- we believe the Examiner has taken a broad, an unduly broad and improper interpretation of claim 135. Claim 135 recites in part wherein the groups of transversal grooves defined the -- wherein the groups of transversal grooves define a plurality of substantially continuous tread portions in the equatorial zone. Wherein each substantially continuous tread portion ends at an equatorial groove portion of a same transversal groove of an axially opposed group of transversal grooves.

Now the Examiner has looked at Hoover, and he has identified the portions in such a way that's inconsistent with that last set of limitations I read. Now he's, he's -- I guess if you -- I don't know if you have the reply right in front of you, but the -- based on, on Hoover, Hoover actually shows a tread portion that does not terminate at the longest transversal groove from

the other set. For example, if you look at Hoover figure 1 on the -- coming down the right side I guess of the, of the tread if you will, and where you can see complete tread portions, I guess the first one would be 11, the second one down would be 11A, and then the next one would be 11. The 11 doesn't stop, if you will, it doesn't terminate at the same groove as the 11 and 11A transfers rib portions -- or tread portions actually. So our, our feeling is that Hoover doesn't disclose that. The Examiner has identified his group in a different way such that he only includes 11 and 11A I believe.

JUDGE HASTINGS: Right, and why is that unreasonable? The claim recites comprising, and then it recites, you know, the Examiner's position is that it recites that the group of grooves define a plurality of tread portions. A plurality I'm sure you agree is two or more. So he's randomly defining, if you want to say that, a plurality as two tread portions.

MR. KENT: Right.

JUDGE HASTINGS: And each of those two tread portions does end at an equatorial groove portion as he outlined in his answer with markings. And your objection to that is that's I guess a random group.

MR. KENT: Yeah --

JUDGE HASTINGS: What, what in your claim prevents that?

MR. KENT: Well, if you look at the claim, and you interpret in light of the disclosure, wherein each substantially continuous tread portion -- let's see. Let me start one ahead of that, one limitation --

JUDGE HASTINGS: Okay.

MR. KENT: -- before that. Wherein the groups of transversal grooves define a plurality of substantially continuous tread portions, so that

would be a group of transversal grooves, if you will, in figure 1, I guess would be 13 and 13, that would be a group.

JUDGE HASTINGS: Right.

MR. KENT: And they define a plurality of continuous tread portions. So they, they define -- really they only -- the two -- those two grooves really only truly define 11A. So even though they're only defining one tread portion, or if you take an alternative view I guess, and you say well, the grooves 13 define perhaps three tread portions, because if you look at 13 it defines I guess one edge of 11, and then the lower 13 is defined or defines -- the upper 13 and the lower 13 define 11A, that second one, and then the lower 13 also defines the tread portion 11 that actually extends almost all the way across the tread.

So I think there's two alternatives. I mean either -- he only defines a single tread portion, the 11A, or it defines three tread portions, and if it defines three tread portions, one of those tread portions extends beyond the groove, so it doesn't meet the limitation.

JUDGE OWENS: Our time is up.

MR. KENT: Okay. Well, thank you very much. I'd just like to say I think if you take the references as a whole, you can't come to the conclusion that, that the claims as a whole are obvious, and we appreciate your consideration. Thank you.

Whereupon, the hearing concluded on January 13, 2009.